

The Law Office of Thaniel J. Beinert

Marc A. Merolesi, Esq.

155 Bay Ridge Avenue

Brooklyn, NY 11220

Tel: (718) 921-6601

Fax: (718) 921-6609

E-mail: marc.merolesi@tjblaw.com

Attorney for RAPI, INC., d/b/a Briosio Ristorante, Pietro DiMaggio and Raffaele DiMaggio.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ARBEN KRASNIQI, on behalf of himself
and all others similarly situated,

Plaintiff,

Case No. 1:17-cv-03945(ARR)(RLM)

ANSWER

-against-

RAPI, INC., d/b/a BRIOSO RISTORANTE,
PIETRO DIMAGGIO AND RAFAELE DIMAGGIO

Defendants.

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Defendants, RAPI, INC., d/b/a Briosio Ristorante ("RAPI"), Pietro DiMaggio and Raffaele DiMaggio (collectively "Defendants"), as and for their Answer to the Complaint ("Complaint") of Plaintiff, hereby allege and state as follows:

AS TO THE NATURE OF THE ACTION

1. Defendants deny the allegations set forth in paragraph 1 of the Complaint.
2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint.

AS TO JURISDICTION

3. Defendants admit the allegations set forth in paragraph 3 of the Complaint, except as to section 18 USC §§1337.

AS TO VENUE

4. Defendants admit the allegations set forth in paragraph 4 of the Complaint.

AS TO THE PARTIES

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint.

6. Defendants deny the allegations set forth in paragraph 6 of the Complaint.

7. Defendants deny the allegations set forth in paragraph 7 of the Complaint.

8. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 8 of the Complaint

9. Defendants admit the allegations set forth in paragraph 9 of the Complaint.

10. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 10 of the Complaint

11. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 11 of the Complaint

12. Defendants admit the allegations set forth in paragraph 12 of the Complaint.

13. Defendants admit the allegations set forth in paragraph 13 of the Complaint.

14. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 14 of the Complaint

15. Defendants deny the allegations set forth in paragraph 15 of the Complaint.

16. Deny the allegations set forth in paragraph 16 of the Complaint.
17. Defendants admit the allegations set forth in paragraph 17 of the Complaint.
18. Defendants admit the allegations set forth in paragraph 18 of the Complaint.
19. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 19 of the Complaint
20. Defendants deny the allegations set forth in paragraph 20 of the Complaint.
21. Defendants deny the allegations set forth in paragraph 21 of the Complaint.
22. Defendants deny the allegations set forth in paragraph 22 of the Complaint.

AS TO THE COLLECTIVE ACTION ALLEGATIONS

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Complaint.
24. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the Complaint.
25. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 25, inclusive of subparagraphs (a) through (g), of the Complaint.
26. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 26 of the Complaint.

27. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 27 of the Complaint.

28. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 28 of the Complaint.

AS TO THE PLAINTIFF'S FACTUAL ALLEGATIONS

29. Defendants deny the allegations set forth in paragraph 29 of the Complaint.

30. Defendants deny the allegations set forth in paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in paragraph 33 of the Complaint.

34. Defendants deny the allegations set forth in paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in paragraph 35 of the Complaint.

36. Defendants deny the allegations set forth in paragraph 36 of the Complaint.

37. Defendants deny the allegations set forth in paragraph 37 of the Complaint.

38. Defendants deny the allegations set forth in paragraph 38 of the Complaint.

39. Defendants deny the allegations set forth in paragraph 39 of the Complaint.

**AS TO FIRST CLAIM - FAIR LABOR STANDARDS ACT – UNPAID
MINIMUM WAGE**

40. Defendants repeat and re-allege their responses to the allegations of paragraph 1

through 39 as if fully set forth herein at length.

41. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 41 of the Complaint.

42. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 42 of the Complaint.

43. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 43 of the Complaint.

44. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 44 of the Complaint.

45. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 45 of the Complaint.

**AS TO SECOND CLAIM – NEW YORK LABOR LAW – UNPAID MINIMUM
WAGE**

46. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 45 as if fully set forth herein at length.

47. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 47 of the Complaint.

48. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 48 of the Complaint.

49. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 49 of the Complaint.

50. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 50 of the Complaint.

**AS TO THIRD CLAIM - FAIR LABOR STANDARDS ACT – UNPAID
OVERTIME**

51. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 50 as if fully set forth herein at length.

52. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 52 of the Complaint.

53. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 53 of the Complaint.

54. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 54 of the Complaint.

55. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 55 of the Complaint.

**AS TO FOURTH CLAIM - FAIR LABOR STANDARDS ACT – UNPAID
OVERTIME**

56. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 55 as if fully set forth herein at length.

57. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 57 of the Complaint.

58. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 58 of the Complaint.

59. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 59 of the Complaint.

60. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 60 of the Complaint.

**AS TO FIFTH CLAIM – NEW YORK LABOR LAW – SPREAD OF HOURS
PAY**

61. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 60 as if fully set forth herein at length.

62. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 62 of the Complaint.

63. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 63 of the Complaint.

64. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 64 of the Complaint.

**AS TO SIXTH CLAIM – NEW YORK LABOR LAW – MISAPPROPRIATION
OF GRATUITIES**

65. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 64 as if fully set forth herein at length.

66. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 66 of the Complaint.

67. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations

set forth in paragraph 67 of the Complaint.

68. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 68 of the Complaint.

69. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 69 of the Complaint.

**AS TO SEVENTH CLAIM – NEW YORK LABOR LAW – FAILURE TO
PROVIDE WAGE NOTICES**

70. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 69 as if fully set forth herein at length.

71. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 71 of the Complaint.

72. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 72 of the Complaint.

**AS TO EIGHTH CLAIM – NEW YORK LABOR LAW – FAILURE TO
PROVIDE ACCURATE WAGE STATEMENTS**

73. Defendants repeat and re-allege their responses to the allegations of paragraph 1 through 72 as if fully set forth herein at length.

74. This paragraph sets forth legal conclusions and questions of law to which no

response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 74 of the Complaint.

75. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraph 75 of the Complaint.

AS TO THE PRAYER FOR RELIEF

Defendants deny the allegations set forth in the "Prayer For Relief" paragraph of the Complaint, and further deny that Plaintiff is entitled to the relief set forth therein or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a cause of action.

THIRD AFFIRMATIVE DEFENSE

Defendants deny that they have committed any violation of the FLSA and/or the New York Labor Law, but should such a violation be found, such violation was not willful.

FOURTH AFFIRMATIVE DEFENSE

Defendants deny that they have committed any violation of the FLSA and/or the New York Labor Law, but should such a violation be found, such violation was de minimis.

FIFTH AFFIRMATIVE DEFENSE

Defendants have acted at all times in good faith and had reasonable grounds for believing that any act or omission did not violate the FLSA or the New York Labor Law.

SIXTH AFFIRMATIVE DEFENSE

Raffaele DiMaggio was not Plaintiffs employer under the applicable statutes.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages, if any.

NINTH AFFIRMATIVE DEFENSE

Without conceding that any acts of Defendants caused damages to Plaintiff, in the event any judgments are entered against Defendants, Defendants are entitled to an offset.

TENTH AFFIRMATIVE DEFENSE

Any alleged violation of the FLSA was not willful and the Plaintiff's claims are therefore limited to two years pursuant to 29 U.S.C. §255.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff suffered any damages, they were not the result of actions

or admissions by Defendants, and were caused by Plaintiff or parties other than Defendants.

TWELFTH AFFIRMATIVE DEFENSE

Because no discovery has yet occurred in this action, Defendants reserve the right to assert further defenses as appropriate.

WHEREFORE, Defendants pray that:

1. The Complaint be dismissed in its entirety with prejudice and Plaintiff take nothing by his Complaint;
 2. Judgment be entered against Plaintiff and in favor of Defendants;
 3. Defendants be awarded their costs of suit and reasonable attorneys' fees incurred herein;
- and
4. The Court award Defendants such other and further relief as it deems appropriate.

**THE LAW OFFICE OF THANIEL J.
BEINERT & ASSOCIATES**
Attorneys for Defendants

By: s/ Marc A. Merolesi
Marc A. Merolesi
155 Bay Ridge Avenue
Brooklyn, New York 11220
(718) 921-6601

Dated : October 4, 2017

CERTIFICATE OF SERVICE

I, Marc A. Merolesi, hereby certify that I caused a true and correct copy of the foregoing Defendants' Answer to the Complaint to be served upon the following counsel:

Pechman Law Group, PLLC
488 Madison Avenue, 11th Floor
New York, New York 10022
Attorneys for Plaintiff

via electronic filing, on this 4th day of October, 2017.

s/ Marc A. Merolesi
Marc A. Merolesi